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February 13, 2020

VIA ECF AND MAIL

Hon. George B. Daniels
United States District Judge
Daniel Patrick Moynihan
United States Courthouse
500 Pearl St. Room 1310
New York, NY 10007-1312

Re: *Rich v. Fox News Network LLC et al.*, Civ. No. 18-cv-02223

Dear Judge Daniels:

Plaintiffs Joel and Mary Rich oppose Defendant Ed Butowsky's motion to dismiss for lack of personal jurisdiction. Mr. Butowsky's motion should be denied for the reasons stated in Plaintiffs' Opposition Brief (Dkt. 56) and at oral argument on June 20, 2018. The Complaint alleges that New York was, by design, the epicenter of Mr. Butowsky's plan to exploit Joel and Mary Rich in order to spread a false story about their son Seth Rich. *See* Amended Compl. ¶ 8 ("Fox also acted with the assistance of Fox's employees and agents, Defendants Zimmerman and Butowsky in New York."); *id.* ¶ 12 ("Butowsky is a frequent contributor on Fox News and Fox Business News in New York."); *id.* ¶ 82 (The day before the article was published "Butowsky wrote by email to various Fox News producers and on-air talent in New York . . . regarding the Zimmerman/Fox Article, stating ... 'I'm actually the one who's been putting this together[.]'").

Although Mr. Butowsky has yet to produce a single document in this case, documents produced by other defendants and in related litigation confirm that this Court has personal jurisdiction over Mr. Butowsky. Plaintiffs now have evidence that conclusively refutes the entire premise of Mr. Butowsky's motion—that "it is not alleged that Mr. Butowsky ever set foot in New York, let alone in connection

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with the underlying facts of this case.” Butowsky Motion at 1 (Dkt. 53).¹ For example:

- **Wheeler0000493 (Exhibit 1):** Mr. Butowsky writes to Rod Wheeler that (as the Complaint alleges) the Zimmerman/Fox article that Butowsky jointly developed with Zimmerman was “*sent to New York* to be published.” This email confirms that that Mr. Butowsky and Ms. Zimmerman targeted Fox News *in New York* for the publication of the Zimmerman/Fox Article.
- **FoxNews0000200 (Exhibit 2):** On May 23, 2017, the day Fox News retracted the Zimmerman/Fox Article, *Ed Butowsky came to New York to meet with Fox News employee Andrew Napolitano about the article*. He wrote: “Good Morning Judge [Napolitano], I have a lot of information that is not known right now in my possession about Seth rich. *I will be in the building this morning are you available for me to share this with you?*” (emphasis added). Mr. Napolitano, located at 1211 Avenue of the Americas, New York, NY, offered to “meet [Mr. Butowsky] in the lobby at 8:30.” *Id.* This demonstrates that Butowsky came to New York as part of his continuing effort to propagate the sham story.
- **FoxNews0000406 (Exhibit 3):** Mr. Butowsky’s May 23, 2017 visit to Fox’s New York office to promote his narrative about Seth Rich and Wikileaks was not an isolated incident. On November 13, 2017, Mr. Butowsky emailed Refet Kaplan (now Executive Editor at Fox News) who oversaw the retraction of the Zimmerman/Fox Articles to let him know he would be *in “NYC* and wanted to discuss a few things.”
- **Butowsky0000981 (Exhibit 4):** On August 10, 2017, Mr. Butowsky emailed CNN journalist Chris Cuomo about the Seth Rich/Wikileaks story, demanding that Cuomo “set the record straight.” On August 18, 2017, Mr. Butowsky asked why Mr. Cuomo would not “allow me back on” and noted, “*I am in nyc* aug 28 to sept 1...which day works for you?” Here, Butowsky is coming to New York for the purpose of continuing to propagate the sham story in the jurisdiction.

¹ As Mr. Butowsky recognized, the Court is “plainly entitled to look outside the pleadings” in making its determination regarding jurisdiction. Butowsky Motion at 6 (citing *Faulkner v. Beer*, 463 F.3d 130, 134 (2d Cir. 2006)).

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- **Butowsky0000306 (Exhibit 5):**² In October of 2018, Mr. Butowsky sent Mr. Cuomo an article titled, “DNC Emails – A Seth Attack Not a Russian Hack” that discussed the Seth Rich/Wikileaks story and this lawsuit. Mr. Butowsky accused Cuomo of “biased” reporting, and offered: “Perhaps we should meet up the next time *I am in NYC*? This way we can discuss your reporting accuracy.”

This is what Plaintiffs know *without having received any discovery* from Mr. Butowsky in this case, jurisdictional or otherwise. These additional documents confirm the “substantial connection with the forum state” that “defendant himself” created. Butowsky Motion at 7 (quoting *Walden v. Fiore*, 134 S. Ct. 1115, 1121 (2014)). All that is required is a “single-act” under New York’s C.P.L.R. § 302(a)(1). But Mr. Butowsky’s contact was not sporadic—he went to and reached into New York on numerous occasions in furtherance of his intentional infliction of emotional distress against the Riches. Plaintiffs have made far more than the necessary “prima facie showing that jurisdiction exists.” *Thomas v. Ashcroft*, 470 F.3d 491, 495 (2d Cir. 2006); Butowsky Motion at 5-6.

If the Court is inclined to grant Mr. Butowsky’s motion notwithstanding the allegations in Plaintiffs’ Opposition Brief and this additional concrete evidence of his repeated contacts with New York, at the very least the Court should allow jurisdictional discovery, including a narrow deposition of Mr. Butowsky regarding his New York contacts. *See* Plaintiffs’ Opposition Br. at 39-40; *City of Almaty v. Ablyazov*, 278 F. Supp. 3d 776, 809 (S.D.N.Y. 2017) (“Jurisdictional discovery is warranted where, even if plaintiff has ‘not made a prima facie showing, [they have] made a sufficient start toward establishing personal jurisdiction.’”) (citation omitted).

Plaintiffs respectfully request that the Court deny the motion and allow the parties to proceed with discovery.

Sincerely,



Elisha Barron

² Mr. Butowsky produced this document in a related litigation.

EXHIBIT 1

From: ebutowsky@gmail.com
To: Rod Wheeler <rod@rodwheeler.com>
Subject: " final " version that she sent to nyc to be published
Date: June 9, 2017 at 2:09:22 PM EDT

This was the final version from what I understand it was sent to New York to be published.

From: ed butowsky <edbutowsky@icloud.com>
Date: May 15, 2017 at 10:55:54 PM CDT
To: lauren petterson <lcpetter@gmail.com>, LAUREN.PETTERSON@FOXNEWS.COM, steve doocy <steve.doocy@foxnews.com>, steve doocy <stevedoocy@mac.com>, Gavin Hadden <gavin.hadden@gmail.com>, Gavin Hadden <gavin.hadden@foxnews.com>, Sean Groman <sean.groman@FOXNEWS.COM>, Alan Hall <alan.hall@foxnews.com>, Brian Kilmeade <brian.kilmeade@foxnews.com>, Ainsley Earhardt <ainsleyproctor@gmail.com>
Subject: Dnc staffer sent emails to Wikileaks

The story is or will be up very early tomorrow morning. Rod Wheeler is up and ready to give interviews. There's more to come on the story but for now this is a massive story there's going to be talked about for a long time.

If you have any questions about the story or more information needed, call me at 972-897-0197. I'm actually the one who's been putting this together but as you know I keep my name out of things because I have no credibility.

One of the big conclusions we need to draw from this is that the Russians did not hack into our computer systems and steel emails and there was no collusion like trump with the Russians.

We're gonna have a follow up story which includes Donna Brazil in her role in all of this.

From: "Zimmerman, Malia McLaughlin" <Malia.Zimmerman@FOXNEWS.COM>
Date: May 15, 2017 at 10:41:02 PM CDT
To: "edbutowsky@icloud.com" <edbutowsky@icloud.com>
Subject: Dnc staffer sent emails to Wikileaks

By Malia Zimmerman

The Democratic National Committee staffer who was gunned down on July 10 on a Washington, D.C., street last July just steps from his home in the cozy Washington DC's Columbia Heights neighborhood, leaked thousands of highly controversial emails to WikiLeaks that were generated internally between DNC party leaders, Fox News has confirmed after a 10-month investigation.

A federal investigator who reviewed an FBI forensic report detailing the contents of DNC staffer Seth Rich's computer generated within 96 hours after his murder, said Rich made contact with Wikileaks through Gavin MacFadyen, a famous American investigative reporter, documentary filmmaker, and director of Wikileaks who was living in London.

"I have seen and read the emails between Seth Rich and Wikileaks," the federal investigator told Fox News, confirming the MacFayden connection. He said the whole case was put to rest after the FBI initial audit. FBI agents were told not to investigate further. The emails sit inside the FBI today, said the federal agent, who asked to remain a confidential source.

Rod Wheeler, a former DC homicide police detective who now runs a private detective firm, said he too uncovered substantial evidence and information that led him to believe the connection between Rich and Wikileaks.

"My investigation up to this point shows there was some degree of email exchange between Seth Rich and Wikileaks," said Wheeler, who was hired to investigate Rich's murder. "I do believe that the answers to who murdered Seth Rich sits on his computer on a shelf at the DC police or FBI headquarters."

The last of the 44,053 emails and 17,761 attachments between Democratic National

Committee leaders, which spanned from January 2015 through late May 2016, were transferred from Rich to Wikileaks before May 21. Fifty days later, Rich was murdered, shot twice in the back and left to die just steps from his home.

On July 22, just 12 days after Rich was killed, Wikileaks published the emails. They showed top DNC officials conspired to stop Sen. Bernie Sanders of Vermont from becoming the party's presidential nominee. That controversy resulted in Debbie Wasserman Schultz resigning as DNC chairperson. A number of Sanders supporters refused to back party nominee, Hillary Clinton, and some subsequently formed groups to work against Clinton and their party.

On August 9, Wikileaks added another mysterious twist to Rich's murder by announcing: "WikiLeaks has decided to issue a US\$20k reward for information leading to conviction for the murder of DNC staffer Seth Rich."

While some in the intelligence community and Congress have blamed Russian hackers for stealing and leaking emails from the DNC and Hillary Clinton's campaign to Wikileaks to impact the election in Donald Trump's favor, the emails show, at least in the case of the DNC emails, the emails were forwarded by Rich. Some close to the investigation believe he could have done this to expose the party's bias against Sanders.

The Metropolitan Police Department has no suspects and no substantial leads as to who the killer or killers may be, sources close to the investigation said.

Metropolitan Police, including the police chief, have continuously refused to grant interviews, answer emailed questions, or take phone calls from Fox News about the murder investigation, or about the FBI's findings or initial involvement in the case.

A source close to the investigation said the DC mayor is closely monitoring this case and officers are restricted in terms of what they can say or not say to the family and the

media.

“It appears that the investigators are walking on eggshells with regard to the case,” the source said.

The FBI’s national office has refused to respond to several inquiries about any initial assistance the agency’s cyber experts provided in the investigation.

“My investigation shows someone within the DC government, Democratic National Committee or Clinton team is blocking the murder investigation from going forward,” Wheeler said. “That is unfortunately. Seth Rich’s murder is unsolved as a result of that.”

Despite obvious knowledge of Rich’s involvement with Wikileaks, DC police have stuck to their initial theory that Rich’s murder was the result of a botched robbery.

The botched robbery theory, which police have pursued for nearly a year, isn’t panning out, Wheeler said. The dual assailants caught on a grainy video tape from a camera posted outside a grocery mart, shot Rich twice in his back, but did not take his wallet, cell phone, keys, watch or necklace worth about \$2,000.

Police detectives typically look at several possible working theories, but Wheeler said that this case appears to be different.

“Something about the email theory has the police tight-lipped,” Wheeler said.

Police could look into whether Rich was killed by someone he knew for personal reasons, possibly out of jealousy, betrayal or anger. They could also investigate

whether he was murdered for political reasons, either out of revenge for him releasing DNC emails to Wikileaks or to prevent him from sending additional files, Wheeler said.

Police should consider all angles, Wheeler said, especially in light of WikiLeaks' founder Julian Assange alluding on August 9 during an interview with a Dutch television reporter that Rich was the source.

"I am suggesting," Assange told the Dutch reporter, "that our sources take risks, and they, they become concerned to see things occurring like that."

On Twitter, Wikileaks announced the reward but said Assange's statement "should not be taken to imply that Seth Rich was a source for WikiLeaks or to imply that his murder is connected to our publications" because Wikileaks has a policy not to release the names of its sources, even after their death.

In subsequent appearances on Fox News Channel, Assange confirmed, "We're interested in anything that might be a threat to alleged WikiLeaks sources."

Assange has not returned a series of recent emails from Fox News about Rich. MacFayden, the director of Wikileaks who initially made contact with Rich, died October 22.

D.C. police announced a \$25,000 reward, and Republican lobbyist Jack Burkman issued a \$130,000 reward, totaling \$175,000 with Wikileaks' reward for information about Rich's killer.

Wheeler said all leads in this case need to be followed to solve Rich's murder including where he went the night he died, who he encountered that night, and who he spoke to

on the phone.

Rich had been at Lou's City Bar a couple of miles from his home until about 1:15 am. He walked home, calling several people along the way. He called his father, Joel Rich, who he missed because he had gone to sleep. He talked with a fraternity brother and his girlfriend, Kelsey Mulka.

Around 4:17 a.m., Rich was about a block from his home when Mulka, still on the phone with him, heard voices in the background. Rich reassured her that he was steps away from being at his front door and hung up.

Two minutes later, Rich was shot twice. Police were on the scene within 3 minutes. Rich sustained bruising on his hands and face. He remained conscious, but died at a nearby hospital within 1 hour and 40 minutes.

Police detectives will not say whether Rich provided them with any clues about the identity of his attackers or their motivation, Wheeler said. However, Wheeler believes Rich could have provided information prior to his death of who was responsible for carrying out his murder.

Police also have refused to release security footage from a market on the corner of the crosswalk where Rich was killed. The footage shows two people following Rich across the tiny crosswalk just moments before he was attacked. The camera captured grainy footage of the assailants' legs and Rich as he fell backwards into the street after being shot.

Wheeler said normally police would release the footage to the media. The family also should be privy to the entire case jacket, with all the details of the case, unless they are considered suspects, Wheeler said. However, to date, the family has not received a copy of the tape or most of the details related to their son's murder case. The homicide

EXHIBIT 2

From: Napolitano, Andrew P. <fe7e81daa8fe471fae92afc3ee6ce892-napolitano,@exchangelabs.com>
Sent: Tuesday, May 23, 2017 7:52 AM
To: Ed Butowsky <ebutowsky@gmail.com>
Subject: RE: The Death of the Grown-Up | Diana West > Home - A Seth Rich Chronology, Part 1

Yes.

I will meet you in the lobby at 8:30.

Call my assistant, 212.301.3610, when you are here.

Andrew P. Napolitano
Senior Judicial Analyst, Fox News Channel
1211 Avenue of the Americas
New York, NY 10036
212.301.3610 (voice)
212.301.5469 (fax)
judgenap@foxnews.com

-----Original Message-----

From: Ed Butowsky [mailto:ebutowsky@gmail.com]
Sent: Tuesday, May 23, 2017 7:49 AM
To: Napolitano, Andrew P. <Andrew.Napolitano@FOXNEWS.COM>
Subject: Re: The Death of the Grown-Up | Diana West > Home - A Seth Rich Chronology, Part 1

I am in on my way over. Can you put me in the system to allow me entrance or can you meet me ? I plan to be in lobby at 8:15 am. You will appreciate what I have .

On 5/23/17, 6:00 AM, "Napolitano, Andrew P." <Andrew.Napolitano@FOXNEWS.COM> wrote:

Yes.

I am here.

I am unable to open the link below.

Andrew P. Napolitano
Senior Judicial Analyst, Fox News Channel
1211 Avenue of the Americas
New York, NY 10036
212.301.3610 (voice)
212.301.5469 (fax)
judgenap@foxnews.com

-----Original Message-----

From: ebutowsky@gmail.com [mailto:ebutowsky@gmail.com]
Sent: Tuesday, May 23, 2017 6:50 AM
To: Napolitano, Andrew P. <Andrew.Napolitano@FOXNEWS.COM>
Cc: Tom McInerney <tmcinerney@earthlink.net>
Subject: Re: The Death of the Grown-Up | Diana West > Home - A Seth Rich Chronology, Part 1

Good morning Judge, I have a lot of information that is not known right now in my possession about Seth rich. I will be in the building this morning are you available for me to share this with you?

> On May 23, 2017, at 9:48 AM, Thomas McInerney <tmcinerney@earthlink.net> wrote:

>

> Judge

>

> More info from Diana West

>

> Tom

>

>>

>> https://urldefense.proofpoint.com/v2/url?u=http-3A__dianawest.net_Home_tabid_36_EntryId_3559_A-2DSeth-2DRich-2DChronology-2DPar&d=DwIFAg&c=cnx1hdOQtepEQkpermZGwQ&r=bakzuAOX6XC0hw_cFuVd7Ta0k2oYaW7AmOCStgV09YA&m=qWUgu4VQKMjJ46wTu2PKR2lfo8xhBVzKZJscTmUdx44&s=LNZ-4_INYwF9oe_nJo&e=

>> t-1.aspx

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>

EXHIBIT 3

From: Ed Butowsky <ebutowsky@gmail.com>
Sent: Monday, November 13, 2017 8:30 PM
To: Kaplan, Refet <Refet.Kaplan@FOXNEWS.COM>
Subject: It is ed butowsky

I am in nyc Weds and Thursday and wanted to discuss a few things if you had time. Thursday afternoon is best for me.

Sent from my iPad

EXHIBIT 4

From: ebutowsky@gmail.com (ebutowsky@gmail.com)
Sent: Tuesday, August 22, 2017 6:38:48 PM
To: chris.cuomo@turner.com (chris.cuomo@turner.com)
Cc: jeff.zucker@turner.com (jeff.zucker@turner.com)
Bcc:
Subject: Re: From Ed Butowsky

Chris , any chance you can call me ? 972.897.0197

> On Aug 18, 2017, at 8:06 PM, Ed Butowsky <ebutowsky@gmail.com> wrote:
>
> Chris, just making sure you saw this. I have now copied Mr.Zucker. Just
not sure why you wont respond. I have to your assistant slides / text
messages that prove everything . As you asked.
> Since my 22 and 19 years old require armed guards as do i (for some
reason my wife has not been threatened) why cant you be honorable and
allow me back on?
> The entire world knows the story is a lie aimed to destroy me and
parent of that is due to the reporting from CNN.
> I am in nyc aug 28 to sept 1.. which day works for you ?
> Ask Alyson about me..
>
> Sent from my iPad
>
>> On Aug 10, 2017, at 5:33 PM, ebutowsky@gmail.com wrote:
>>
>> Now that the news out proving that the lawsuit has no basis in that
and is all made up , don't you think it is appropriate to have me on to
set the record straight and make clear what happened to me and my family.
>> My reputation has been destroyed on a huge made up fake story by Rod
Wheeler and Doug Wigdor that the media went with without even checking.
>> Wheeler even admitted in your interview that he lied but you didn't
say anything.
>> Btw, I also have reached out 7 times to you without a response. Please
check with your staff. It relevant because you said on television I
hadn't reached out to you to provide you proof and I have.
>>
>> My direct line is 972.897.0197.
>> I will wait to hear from you.
>>
>>
>> 972.897.0197

EXHIBIT 5

From: ed butowsky (ebutowsky@gmail.com)
Sent: Wednesday, October 24, 2018 7:12:35 AM
To: chris.cuomo@turner.com (chris.cuomo@turner.com)
Cc:
Bcc:
Subject: from ed butowsky...

If you aren't a biased , political hack then why have you ignored your commitment to me? You went out of your way and CNN still does to make me look bad. You believed an idiotic story because it made trump look bad and you helped spread it. You promised to have me on after I sent you all the proof but you failed to follow through.

Man to man... are you proud of what you do ?

Below is all true. But I am sure you wont read it nor investigate it because of your ego. Last time you wrote to me , you threatened me with Physical harm. I was shocked.

Perhaps we should meet up the next time I am in nyc? This way we can discuss your reporting accuracy.

DNC Emails--A Seth Attack Not a Russian Hack by Publius Tacitus

If Russia had actually "hacked" the DNC emails then the National Security Agency would have had proof of such activity. In fact, the NSA could have tracked such activity. But they did not do that. That lack of evidence did not prevent a coordinated media campaign from spinning up to pin the blame on Russia for the "theft" and to portray Donald Trump as Putin's lackey and beneficiary.

Any effort to tell an alternative story has met with stout opposition. Fox News, for example, came under withering fire after it published an article in May 2017 claiming that Seth Rich, a young Democrat operative, had leaked DNC emails to Julian Assange at Wikileaks. The family of Seth Rich reacted with fury and sued Fox, Malia Zimmerman and Ed Butowsky, but that suit subsequently was dismissed.

Now there is new information, courtesy of the National Security Agency aka NSA, that confirms that the NSA has Top Secret and Secret documents that are responsive to a FOIA request for material on Seth Rich and his contacts with Julian Assange. While the content of these documents remain classified for now, they may provide documentary proof that Seth Rich "dropped boxed" the emails to Julian. If these documents are declassified, a big hole could be blown in the claim that Russia hacked the DNC.

If Seth Rich was just a normal kid in the wrong place at the wrong time, his murder and untimely death would only have been a minor blip in the news cycle. Blip or not, it was a terrible loss for his family and friends. But Seth was not an ordinary kid. He worked for the Democratic National Committee aka the DNC and described himself as an "experienced and impassioned data analyst" keen on making the world a better place.

Rich met a sudden and brutal end in a neighborhood near the U.S. Capitol in Washington, DC in the early hours of July 10, 2016. The initial report about the murder did not raise any political antanae in the United States. The CNN reporting of the murder was representative of the coverage at the time:

A Democratic National Committee employee died this weekend after he was shot in Northwest Washington.

Seth Rich, 27, suffered multiple gunshot wounds early Sunday morning in Washington's Bloomingdale neighborhood, according to law enforcement officials.

D.C. police said officers who had been patrolling the area responded to the sound of shots fired, ultimately finding Rich at the scene both "conscious and breathing." He was then transported to an area hospital, where police said he "succumbed to his injuries and was pronounced dead."

Rich worked as voter expansion data director for the DNC since 2014, the DNC confirmed. A 2011 graduate of Creighton University, Rich's resume is filled with various jobs in Democratic politics and political consulting.

But the circumstances and facts surrounding the murder were strange. Seth was shot in the back. Nothing was taken from his body—not his watch, not his wallet and not his credit cards. There was no obvious answer to the questions—who shot Seth and why?

The interest in Seth's death took a dramatic turn when Wikileaks dumped the contents of DNC emails on its website on July 22, 2016. In order to put the Wikileaks theory regarding Seth's death in proper perspective, we must review events in the prior months connected to the Hillary Clinton and DNC email controversies.

Seth Rich will go down in history, fairly or unfairly, linked to the debate surrounding Hillary Clinton's missing and/or classified emails. During her time as Secretary of State, Hillary used a private server and sent thousands of messages over that server. This included emails containing Top Secret material.

In May 2016, the State Department Inspector General added further fuel to the controversy by concluding that Hillary had violated State Department protocols and policies:

The Inspector General was unable to find evidence that Clinton had ever sought approval from the State Department staff for her use of a private email server, determining that if Clinton had sought approval, Department staff would have declined her setup because of the "security risks in doing so." [54] Aside from security risks, the report stated that "she did not comply with the Department's policies that were implemented in accordance with the Federal Records Act." [57]

Public interest in Hillary's emails grew on June 12, 2016 when Wikileaks founder, Julian Assange, stated during an ITV interview that his outfit had more a Hillary emails:

"We have upcoming leaks in relation to Hillary Clinton ... We have emails pending publication, that is correct," Assange said.

Two days later (June 14) came news that the DNC computers had been "hacked" by the Russians. Ellen Nakamura, a Washington Post reporter who had been briefed by computer security company hired by the DNC—CrowdStrike--, wrote:

Russian government hackers penetrated the computer network of the Democratic National Committee and gained access to the entire database of opposition research on GOP presidential candidate Donald Trump, according to

The intruders so thoroughly compromised the DNC's system that they also were able to read all email and chat traffic, said DNC officials and the security experts.

The intrusion into the DNC was one of several targeting American political organizations. The networks of presidential candidates Hillary Clinton and Donald Trump were also targeted by Russian spies, as were the computers of some Republican political action committees, U.S. officials said. But details on those cases were not available.

The Nakamura piece marked the first salvo in the Russian hacking meme. But the claim was not backed up by independently verified forensic evidence—it rested solely on the conclusions of a computer security company—CrowdStrike. The pro-Ukrainian politics of CrowdStrike's founder, Dmitri Alperovitch, and his strident opposition to Russia cast a pall of bias over the findings of CrowdStrike. No U.S. Federal Law Enforcement official or agency was given access to the DNC servers. Neither the FBI nor Homeland Security were permitted to examine the servers and the alleged evidence of a hack.

CrowdStrike revealed that not one but two groups of hackers believed to be based in Russia had done just that. The intruders, according to CrowdStrike and the DNC officials who spoke to the Washington Post, fully accessed the campaign organization's emails and chats, and stole opposition research on Republican presidential front-runner Donald Trump. . . .

In a blog post detailing the attack, CrowdStrike pointed to two groups of known Russian government-aligned hackers, one dubbed Cozy Bear and another called Fancy Bear. According to CrowdStrike, the two teams seemingly worked independently, either unaware of each others' existence or even vying for dominance within the strange, internally competitive intelligence apparatus of Vladimir Putin's regime.

The most bizarre aspect of CrowdStrike's claim is that it started its "investigation" of the so-called hacking on the 7th of May and supposedly immediately discovered it was "the Russians." Yet CrowdStrike waited more than a month to do what should have been done on 7 May—shutdown the network. Vicky Ward reported in Esquire on 24 October 2016 that CrowdStrike waited until June 10 to take steps to protect the DNC network:

Ultimately, the teams decided it was necessary to replace the software on every computer at the DNC. Until the network was clean, secrecy was vital. On the afternoon of Friday, June 10, all DNC employees were instructed to leave their laptops in the office.

For the next two days, three CrowdStrike employees worked inside DNC headquarters, replacing the software and setting up new login credentials using what Alperovitch considers to be the most secure means of choosing a password: flipping through the dictionary at random. (After this article was posted online, Alperovitch noted that the passwords included random characters in addition to the words.) The Overwatch team kept an eye on Falcon to ensure there were no new intrusions. On Sunday night, once the operation was complete, Alperovitch took his team to celebrate at the Brazilian steakhouse Fogo de Chão.

This was a classic case of closing the barn door after the horse had escaped. CrowdStrike started work in early May 2016 but failed to prevent the DNC emails from making their way to Wikileaks. The DNC emails that were released on July 22, 2016 by Wikileaks covered the period from January 2015 thru 25 May 2016. CrowdStrike started work on 7 May at the DNC. If this was truly a hack from an outside computer network then it should have been impossible for any outsider to electronically hack the DNC network. But the information on the DNC network was

taken around the close of business on the 25th of May.

The day after Ellen Nakamura reported that the Russians had hacked the DNC, Guccifer 2.0 surfaced and took credit for the hack. Guccifer 2.0 made a point of specifically denying that he was Russian in an interview with Motherboard:

"I don't like Russians and their foreign policy. I hate being attributed to Russia," he said, adding that he was from Romania, just like the first Guccifer.

Guccifer 2.0 said he hacked into the DNC in the summer of 2015. He claimed that he used an unknown vulnerability in NGP VAN, which is a software provider for the DNC, to hack into the DNC servers, which have a Windows architecture. (There's no evidence whatsoever that the hacker really broke through via NGP VAN.)

"Then I installed my Trojans on several PCs. I had to go from one PC to another every week so CrowdStrike couldn't catch me for a long time," he said. "I know that they have cool intrusion detection system. But my heuristic algorithms are better."

Guccifer's claim to be something other than Russian immediately was derided by those invested in the blame Russia meme. Motherboard, for example, published a piece on June 16 labeling Guccifer 2.0 as a Russian front, but that conclusion was based solely on circumstantial, stylistic evidence:

... considering a long trail of breadcrumbs pointing back to Russia left by the hacker, as well as other circumstantial evidence, it appears more likely that Guccifer 2.0 is nothing but a disinformation or deception campaign by Russian state-sponsored hackers to cover up their own hack—and a hasty and sloppy one at that.

Guccifer 2.0 surfaced again the end of June with more documents:

On June 30, Guccifer 2.0 posted additional documents from the Democratic National Committee's servers on the WordPress blog. The post again denied Russian links, and spoke admiringly of Julian Assange, the founder of WikiLeaks; Edward J. Snowden, the former intelligence analyst who leaked archives of surveillance documents; and Chelsea Manning, the Army private who sent a huge trove of military and diplomatic documents to WikiLeaks in 2010.

Guccifer 2.0 faded into the woodwork when Wikileaks released the DNC emails on the 22 of July. Although Wikileaks protected the source of the DNC material, Julian Assange insisted that Russia had anything to do with putting the DNC trove into his hands.

Following the Wikileaks dump, Donald Trump made news on the campaign trail by sarcastically calling on the Russians to provide Hillary's missing 30,000 emails:

"Russia, if you're listening, I hope you'll be able to find the 30,000 emails that are missing," he said, referring to deleted emails from the private account Hillary Clinton used as secretary of State. "I think you'll probably be rewarded mightily by our press."...

"If Russia or China or any other country has those emails, I've got to be honest with you. I'd love to see them," he said later, declining to back down.

Experts suspect that Russian agents are behind the hack and release of Democratic officials' emails last week that showed officials discussing ways to undermine Bernie Sanders' primary campaign against Clinton.

Trump often has praised Putin and has claimed to have met him, but on Wednesday, he denied that they have met. He also denied multiple media reports that he is in debt to Russian lenders.

Trump clearly was joking. He was riffing on the fact that the DNC emails had been published on Wikileaks and that Russia was being blamed. But the Democrats, never known for their keen sense of humor, seized on this moment as an opportunity to introduce the meme that Trump and Russia were collaborating to stop Hillary's quest for the Presidency. The Hillary team understood the fundamentals of good drama--i.e., a solid story needs a good villain. Donald and Vladimir Putin became the villains of this tale:

Hillary Clinton . . . accused Russian intelligence services of hacking into the Democratic National Committee computers and she said her Republican rival Donald Trump has shown support for Russian president Vladimir Putin.

"We know that Russian intelligence services hacked into the DNC and we know that they arranged for a lot of those emails to be released and we know that Donald Trump has shown a very troubling willingness to back up Putin, to support Putin," Ms Clinton said in an interview with Fox News, as reported by Reuters.

US officials and cyber security experts have previously said they believed Russia had something to do with the release of the emails in order to influence the election.

In reviewing the media coverage of the DNC "hack" during June and July the name of Seth Rich does not surface even as a minor concern. This all changed on August 9, 2016 when Wikileaks's Julian Assange announced via Twitter "a \$20,000 reward for information leading to a conviction in Rich's killing on July 10 in the 2100 block of Flagler Place NW." Assange subsequently discussed the murder of Seth Rich during an interview with Dutch TV:

WikiLeaks editor Julian Assange suggested that the Democratic National Committee staffer shot dead last month in Washington, DC, was killed because he was a "source."

"Whistleblowers go to significant efforts to get us material and often very significant risks. As a 27-year-old, works for the DNC, was shot in the back, murdered just a few weeks ago for unknown reasons as he was walking down the street in Washington," he told Dutch TV, referring to Seth Rich, who was gunned down in the early morning hours of July 10 while walking to his apartment in Bloomingdale.

The interviewer followed up by asking, "That was just a robbery, I believe. Wasn't it?"

The WikiLeaks founder cryptically replied, "No, there's no finding . . . I'm suggesting that our sources take risks."

Rather than address the substance and facts of what Wikileaks and Assange were saying and doing with respect to Seth Rich, most of the media concentrated on dismissing the Seth Rich story as a crazed conspiracy theory.

The only media outlet that tried to tell this story--Fox News--soon found itself in a media and legal maelstrom. Fox released a well-sourced article in May 2017. Written by Malia Zimmerman, the article reported that Seth had downloaded the Wikileaks documents, uploaded them to a DropBox account and passed them on to Julian Assange. Malia wrote:

The Democratic National Committee staffer who was gunned down on July 10 on a Washington, D.C., street last July just steps from his home in the cozy Washington DC's Columbia Heights neighborhood, leaked thousands of highly controversial emails to WikiLeaks that were generated internally between DNC party leaders, Fox News has

A federal investigator who reviewed an FBI forensic report detailing the contents of DNC staffer Seth Rich's computer generated within 96 hours after his murder, said Rich made contact with Wikileaks through Gavin MacFayden, a famous American investigative reporter and director of Wikileaks.

"I have seen and read the emails between Seth Rich and Wikileaks," the federal investigator told Fox News, confirming the MacFayden connection. But he said the whole case was put to rest after the FBI initial audit, and agents were told not to investigate further. The emails sit inside the FBI today, said the federal agent, who asked to remain a confidential source.

The Fox News piece was solid and well sourced. In addition to the Federal agent who confirmed Seth Rich had made contact with Wikileaks using a cut out, two other people with direct access to Julian Assange also told Fox reporters that Seth was the source for the DNC emails.

The DNC sprang into action and moved aggressively to shut down the Fox story. Fox, along with Malia Zimmerman and Ed Butowsky, were sued by the Rich family and by investigator Rod Wheeler claiming that some or all elements of the story were false. The lawyers behind these suits were tied to the Democrats. In the face of this pressure, Fox News folded like a cheap tent in a hurricane and pulled the Malia Zimmerman story.

Too bad Fox lacked the courage to back Malia Zimmerman because the lawsuit fell apart. The cases were dismissed in August 2018:

A federal judge in Manhattan dismissed a lawsuit Thursday that was brought against Fox News by the parents of Seth Rich, the young Democratic aide whose unsolved murder was turned into fodder for a lingering right-wing conspiracy theory.

In his dismissal of the lawsuit, Judge George B. Daniels said he sympathized with Mr. Rich's parents, but added that they had not been personally defamed by the story — despite the fact that it included "false statements or misrepresentations."

Who killed Seth Rich remains a mystery. It is unfortunate that the Fox News story intermingled the speculation that Seth's murder was a deliberate hit with the actual factual statements identifying him as the source of the DNC emails.

But now there is new information that may corroborate what the human sources quoted in the Fox article claimed about Seth's role in getting the DNC documents to Wikileaks. Borne from a FOIA request filed in November 2017 by attorney Ty Clevenger, who requested any information regarding Seth Rich and and Julian Assange. The NSA informed Clevenger in a letter dated 4 October 2018 that:

Your request has been processed under the provisions of the FOIA. Fifteen documents (32 pages) responsive to your request have been reviewed by this Agency as required by the FOIA and have found to be currently and properly classified in accordance with Executive Order 13526. These documents meet the criteria for classification as set forth in Subparagraph (c) of Section 1.4 and remains classified TOP SECRET and SECRET.

If NSA had come back and said, "No, we do not have anything pertaining to Seth Rich," that would have been news. It would have been especially unwelcome news for those who believe that Seth was the source on the DNC emails. But now the opposite is true. The NSA says that it has documents that are classified TS and S. What do those

But there is other evidence that buttresses the claim that the DNC emails were physically downloaded and then transferred to Wikileaks rather than being taken via an electronic intrusion of the DNC network. This is not a matter of opinion. It is a simple matter of science and math.

As noted earlier, Guccifer 2.0 took credit in mid-June 2016 for “hacking” the DNC and published documents as proof of his culpability. Those documents contain meta data. Bill Binney, who served with distinction as a Technical Director at the NSA, has written extensively on this issue:

We stand by our main conclusion that the data from the intrusion of July 5, 2016, into the Democratic National Committee’s computers, an intrusion blamed on “Russian hacking,” was not a hack but rather a download/copy onto an external storage device by someone with physical access to the DNC.

That principal finding relied heavily on the speed with which the copy took place – a speed much faster than a hack over the Internet could have achieved at the time – or, it seems clear, even now. Challenged on that conclusion – often by those conducting experiments within the confines of a laboratory – we have conducted and documented additional tests to determine the speeds that can be achieved now, more than a year later.

To remind: We noted in the VIPS memo that on July 5, 2016, a computer directly connected to the DNC server or DNC Local Area Network, copied 1,976 megabytes of data in 87 seconds onto an external storage device. That yields a transfer rate of 22.7 megabytes per second. (<https://consortiumnews.com/2017/09/20/more-holes-in-russia-gate-narrative/>)

The meta data does not prove that Seth Rich did it or that it occurred at the DNC headquarters. But the meta data does conclusively show that the material provided by Guccifer 2.0, which the US DOJ now insists was a Russian front, could not have been obtained via a computer hack.

So what do we know for certain?

First, no one in the Federal Government—law enforcement or intelligence—was granted access to examine the computer servers and files on the DNC server even after the DNC claimed they had been hacked by a foreign government.

Second, the steps that CrowdStrike allegedly took to shutdown computer hacking by Russia do not match the timeline of the actual download of the documents from the DNC server.

Third, Seth Rich worked at the DNC and had access to the computer server and systems.

Fourth, Wikileaks founder Julian Assange identified Seth Rich as a “source” and posted a \$20,000 reward for information concerning his murder.

Fifth, a Federal law enforcement agent told two witnesses that Seth Rich had email exchanges with Wikileaks.

Sixth, two people with direct access to Julian Assange told three separate sources that Seth Rich was the source of the DNC material published by Wikileaks.

Seventh, the documents published by Guccifer contain meta data that establish that the documents were physically downloaded onto a device like a thumb drive.

Eighth, the NSA has confirmed that it has Top Secret and Secret documents responsive to a FOIA request for information concerning contact between Seth Rich and other people including Julian Assange.